



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

52

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,077	04/12/2001	James O. Roberts	29443802SUS1	3869

500 7590 04/18/2005

SEED INTELLECTUAL PROPERTY LAW GROUP PLLC  
701 FIFTH AVE  
SUITE 6300  
SEATTLE, WA 98104-7092

EXAMINER
----------

HAILU, TADESSE

ART UNIT	PAPER NUMBER
----------	--------------

2173

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/835,077	<b>Applicant(s)</b> ROBARTS ET AL.	
	<b>Examiner</b> Tadesse Hailu	<b>Art Unit</b> 2173	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 December 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 60-69, 71 and 76-131 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 60-69, 71 and 76-109 is/are allowed.
- 6) ☐ Claim(s) 110 and 112-131 is/are rejected.
- 7) ☐ Claim(s) 111 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

4

***DETAILED ACTION***

1. This Office Action is in response to the Amendment entered on December 28, 2004 for the patent application number 09/835,077 filed 4/12/2001.

***Priority***

2. The patent application claims priority from US Application number 09/216,193, filed December 1998.

***Status of the claims***

3. Applicant canceled claims 1-59, 70, and 72-75, and added new claims 76-131, thus, the pending claims 60-69, 71 and 76-131 are examined herein as follows.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 110, and 112-131 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. Since the preamble recites a system, the remainder of the claim does not support the preamble, that is, the body of the claim does not recite any machine/hardware system at all.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Art Unit: 2173

5. Claims 110, and 112-131 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Consistent with the definitions in the Specification, also as evidenced in claim 130, "a first module", "a second module", and "a third module" are software modules. Thus, since the above claims are directed to arrangements of software, per se, therefore, the recited system claim is not a tangible system.

***Allowable Subject Matter***

6. Claims 60-69, 71, 76-109 are allowed.

The following is an examiner's statement of reasons for allowance: As indicated in the previous Office Action, the prior art of records, Theimer et al (US Pat No 5,493,692), Herz (US Pat No 6,460,036), Paul (US Pat No 5,999,932), Goldberg et al (US Pat No 6,264,560) and Lang et al (US Pat No 5,867,799) teach all of the claimed subject matter except for a method including receiving an indication from the user to generate a virtual device that can be triggered by a context of another player, and generating the indicated virtual device as recited in independent claim 60, as well as in a computer readable medium claim 85. Since dependent claims 61-69, 71, 76-84, and 86-109 incorporate all the features/limitations of claims 60 and 85, respectively, these claims are also allowed.

7. Claim 111 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 2173

8. Claims 110, 112-131 recite similar subject matter as recited in the above allowable claims, Claims 110, 112-131 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, and 35 U.S.C. 101 set forth in this Office action.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

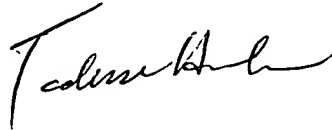
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Tadesse Hailu, whose telephone number is (571) 272-4051. The Examiner can normally be reached on M-F from 10:00 - 6:30 ET. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, John Cabeca, can be reached at (571) 272-4048 Art Unit 2173.

Art Unit: 2173

11. An inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Examiner Tadesse Hailu  
Art Unit 2173 – 4/15/05

A handwritten signature in black ink, appearing to read "Tadesse Hailu", written in a cursive style.